BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation	)	**WT Docket No. 95-157**
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	)	

To: The Commission

REPLY COMMENTS OF COLORADO SPRINGS UTILITIES

Colorado Springs Utilities ("CSU") through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC's" or "Commission's") rules, respectfully submits the following Reply Comments in response to the Comments submitted on the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.[1/]

I. Statement of Interest.

1. CSU is a municipal utility located in Colorado Springs, Colorado. Its service territory covers a

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[1/] Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, 60 Fed. Reg. 55529 (November 1, 1995). While Reply Comments were scheduled to be filed by December 21, 1995, CSU was unable to file its Reply Comments until today due to the partial shutdown of the Federal Government.

population of approximately 400,000. In order to meet its service and customer demands, CSU has installed a wireless communications network in support of its utility services. An integral part of this network is CSU's 2 GHz microwave backhaul system. Consequently, CSU has a keen interest in the outcome of this proceeding.

II. The Commission Must Not Change Existing Rules.

A. COMMENTS ON CHANGING THE TRANSITION RULES MUST BE DISMISSED.

2. CSU is alarmed by the Comments filed in response to the NPRM that seek to "turn back the clock" and reopen and rewrite the transition rules promulgated in ET Docket No. 92-9. Rather than comment solely on the issues set forth in the NPRM, several Commenters from the PCS industry instead have focused on attacking protections for the microwave community put in place in ET Docket No. 92-9.[2/] Yet, in the NPRM, the Commission was clear that it did not intend to reconsider any of the transitions rules: "[w]e emphasize that our intent is not to reopen that proceeding here, because we believe that the general approach to relocation in our existing rules is sound and equitable."[3/]

[2/] See, e.g., AT&T Wireless and PCS PrimeCo, L.P.

[3/] NPRM at ¶ 3 (underline added).

3. The Commission cannot rewrite now the transition rules. This proceeding should only focus on issues concerning reimbursement rights of PCS licensees. Suggestions that the Commission "clarify" the transition rules are thinly veiled attempts to rewrite the rules promulgated in ET Docket No. 92-9.

B. THE ORIGINAL DEFINITION OF "COMPARABLE FACILITIES" MUST BE RETAINED.

4. The Commission must retain its original definition of comparable facilities -- a replacement system that is "equal to or superior to existing facilities."[4/] In this proceeding, the microwave industry has vividly described the critical functions of 2 GHz systems, and has noted that any degradation of current facilities would have critical system implications.[5/] CSU supports those Commenters who argued that the current definition of comparable facilities must be maintained, especially in regards to system reliability.[6/] Finally, CSU notes the inequity which would occur if the

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[4/] NPRM at ¶ 70.

[5/] Los Angeles County at 1-2, National Rural Electric Cooperative Association ("NRECA") at 3-4, and Tenneco Energy ("Tenneco") at 3-6.

[6/] The Southern Company ("Southern") at 10, Cox & Smith, Inc. at 4-5, and Southern California Gas Company ("SCG") at 14.

Commission allows PCS licensees to pay depreciated system values, or to replace systems with other analog systems.[7/]

5. CSU opposes the recommendation that independent cost estimates be used in the event that the negotiating parties disagree as to what is comparable during voluntary negotiations. Use of cost estimates undermines the flexibility and the principles of the voluntary negotiation period.[8/]

C. THE COMMISSION'S PROPOSED "GOOD FAITH" STANDARD IS UNFAIR

6. The Commission has proposed that any offer to relocate the microwave incumbent's facilities during the mandatory relocation period is a good faith offer, and failure by the incumbent to accept the offer is "bad faith."[9/] Naturally, the PCS community supported this concept and even proposed to impose this "clarification" in the voluntary period.[10/] CSU contends that no party should feel obligated to accept an unreasonable offer. Microwave

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[7/] See UTC at 25, Tenneco at 11, and SCG at 16.

[8/] UTC at 26-27 and Valero Transmission, L.P. ("Valero") at 5.

[9/] NPRM at ¶ 69.

[10/] Southwestern Bell Mobile Systems ("SBMS") at 2-3, AT&T Wireless at 15, and Sprint Telecommunications Venture ("STV") at 18-19.

incumbents should be allowed to make reasonable counteroffers without worrying about presumptions of bad faith. CSU supports comments consistent with this view.[11/] In addition, CSU believes that any attempt to extend the presumption of bad faith to the voluntary negotiation period would effectively constitute a reexamination of the negotiating process which goes beyond the scope of the current proceeding.

II. The Commission Must Uphold Existing Protections for Microwave Incumbents.

7. The Commission must recognize the soundness and equity of the arguments advocated by the microwave incumbents in support of retaining existing protections. It cannot lose sight of the fact that microwave incumbents are the entities that have been forced to relocate, and ultimately are bearing the larger burden in relocation.

A. PRIMARY LICENSING STATUS.

8. When no PCS licensee offers to relocate a particular link of a microwave incumbent, CSU believes the incumbent must be allowed to maintain its primary licensing

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[11/] Association of American Railroads ("AAR") at 14, Tenneco at 8, and Industrial Telecommunications Association at 4.

status over that link indefinitely, and also have the assurance that if and when interference occurs, it still will be relocated by the PCS licensee.[12/] It is an inherent inequity to relegate all microwave links to secondary status after April 4, 2005. Moreover, this policy is contrary to the finalized transition rules. See, 47 C.F.R. § 94.59(c). PCS licensees, in contrast, not only oppose continued primary licensing status beyond 2005, but have even sought to restrict primary status as early as April 4, 1996.[13/]

9. The Commission also must protect the licensing status of minor modifications to existing 2 GHz facilities. The NPRM proposes to tighten the standards on classification of minor modifications by requiring microwave incumbents to show that the modification will not increase relocation costs. This is an unreasonable burden to place on 2 GHz licensees. Microwave licensees, co-primary with PCS licensees, must be allowed to make minor modifications in order to maintain system viability (especially as links get relocated) without having to determine the impact on relocation.

12/ UTC at 29-30, Valero at 5, AAR at 8-9, Tenneco at 14-15, APCO at 11-12, East River Electric Power Cooperative ("East River") at 2-3, SCG at 12, and NRECA at 7.

13/ Pacific Bell Mobile Services ("PacBell") at 12.

B. TWELVE-MONTH TRIAL PERIOD.

10. The Commission must retain the 12-month trial period and must not consider those Comments proposing to shorten the period.[14/] In addition, the Commission must not consider proposals that microwave incumbents surrender licenses during the trial period with no opportunity to regain the licensee if the replacement systems proves unworkable.[15/] Such proposals have no justifiable rationale and instead are intended to bind microwave incumbents after initial relocations. Microwave incumbents must be allowed 12 months to test the new system. If the facilities are not comparable, they then must be relocated back to their existing 2 GHz facilities. 47 C.F.R. § 94.59(e). The finality of these rules makes it impossible for the Commission to adopt alternative proposals.

III. The Reimbursement Cap.

11. The FCC's cap was not well-received by Commenters. The microwave community adamantly opposed the cap as arbitrary, artificially low and inadequate in cases where

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[14/] PCS Primeco at 19. PacBell seeks to eliminate the trial period altogether. PacBell at 8.

[15/] SBMS at 5-6.

costs may exceed the cap.[16] CSU also contends that the cap is an indirect method of limiting the value of microwave systems and effectively hinders the negotiation process. Similarly, the PCS community expressed opposition to the cap. For example, GTE commented that the cap will not make more certain costs to be paid by future PCS licensees.[17] Other PCS licensees acknowledged that actual costs may exceed the cap, and recommended a floating cap.[18] The Commission must recognize that in many instances the actual relocation costs will exceed the proposed cap. Therefore, the cap proposal as proposed is unworkable and should not be adopted.

B. ADJACENT CHANNEL INTERFERENCE MUST BE INCLUDED IN REIMBURSEMENT OBLIGATIONS.

12. CSU advocates the inclusion of adjacent channel interference and co-channel interference as factors which trigger the reimbursement obligations. With a few exceptions, the majority of commenters, including PCS entities, agreed on this point.[19] Because microwave incumbents currently receive adjacent channel interference

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[16] UTC at 12-13, Valero at 3, AAR at 9, SCG at 6, and American Gas Association at 4-5.

[17] GTE at 15.

[18] BellSouth at 7 and STV at 27.

[19] See, e.g., UTC at 7, AAR at 12, and SBMS at 6.

protection, CSU believes that protection from adjacent channel interference is a paramount issue which must be preserved.

WHEREFORE THE PREMISES CONSIDERED, Colorado Springs Utilities respectfully requests that the Commission act upon this Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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